

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 13-CR-192

MARIANO A. MEZA,
a/k/a MARIANO ALEJANDRO MEZA-RODRIGUEZ,

Defendant.

PROPOSED JURY INSTRUCTIONS

The United States, by its attorneys, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Gail J. Hoffman, Assistant United States Attorney, respectfully submit that the following proposed jury instructions. The United States reserves the right to modify or resubmit these instructions at any time prior to jury deliberations.

Respectfully submitted at Milwaukee, Wisconsin, this ____ day of July, 2014.

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COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

1.01 FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. Each of you has a copy of these instructions to use in the jury room. You must follow all of my instructions about the law, even if you disagree with them. This includes the instructions I gave you before the trial, any instructions I gave you during the trial, and the instructions I am giving you now.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to take the law as I give it to you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear, or public opinion influence you. In addition, do not let any person's race, color, religion, national ancestry, or gender influence you.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

Seventh Circuit Federal Criminal Jury Instructions § 1.01.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

1.02 THE CHARGE

The charge against the defendant is in a document called an indictment. You will have a copy of the indictment during your deliberations.

The indictment in this case charges that the defendant with possession of ammunition by an alien illegally and unlawfully in the United States. The defendant has pled not guilty to the charge.

The indictment is simply the formal way of telling the defendant what crime he is accused of committing. It is not evidence that the defendant is guilty. It does not even raise a suspicion of guilt.

Seventh Circuit Federal Criminal Jury Instructions § 1.02.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

1.03 PRESUMPTION OF INNOCENCE/BURDEN OF PROOF

The defendant is presumed innocent of the charge. This presumption continues throughout the case, including during your deliberations. It is not overcome unless, from all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty as charged.

The government has the burden of proving the defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case.

The defendant is never required to prove his innocence. He is not required to produce any evidence at all.

Seventh Circuit Federal Criminal Jury Instructions § 1.03.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

2.01 THE EVIDENCE

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agreed to. A stipulation is an agreement that certain facts are true.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he thinks a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been. If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

Seventh Circuit Federal Criminal Jury Instructions § 2.01.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

2.02 CONSIDERING THE EVIDENCE

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

Seventh Circuit Federal Criminal Jury Instructions § 2.02.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

2.03 DIRECT AND CIRCUMSTANTIAL EVIDENCE

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

Seventh Circuit Federal Criminal Jury Instructions § 2.03.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

2.04 NUMBER OF WITNESSES

Do not make any decisions simply by counting the number of witnesses who testified about a certain point.

What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.

Seventh Circuit Federal Criminal Jury Instructions § 2.04.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

2.05 DEFENDANT'S FAILURE TO TESTIFY OR PRESENT EVIDENCE

A defendant has an absolute right not to testify or present evidence. You may not consider in any way the fact that the defendant did not testify or present evidence. You should not even discuss it in your deliberations.

Seventh Circuit Federal Criminal Jury Instructions § 2.05.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

3.01 CREDIBILITY OF WITNESSES

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness' testimony. You may accept all of what a witness says, or part of it, or none of it.

Some factors you may consider include:

- the intelligence of the witness;
- the witness' ability and opportunity to see, hear, or know the things the witness testified about;
- the witness' memory;
- the witness' demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness' testimony in light of the other evidence presented; and
- inconsistent statements or conduct by the witness.

Seventh Circuit Federal Criminal Jury Instructions § 3.01.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

3.02 ATTORNEY INTERVIEWING WITNESS

It is proper for an attorney to interview any witness in preparation for trial.

Seventh Circuit Federal Criminal Jury Instructions § 3.02.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

3.09 STATEMENT BY DEFENDANT

You have heard testimony that the defendant made statements to City of Milwaukee Detective Kenyatte Wooden, and Department of Homeland Security Immigration and Enforcement Agent Cassandra Shearing. You must decide whether the defendant actually made each statement and, if so, how much weight to give to each of the statements. In making these decisions, you should consider all of the evidence, including the defendant's personal characteristics and circumstances under which the statements may have been made.

Seventh Circuit Federal Criminal Jury Instructions § 3.09.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

3.14 RECORDED CONVERSATIONS/TRANSCRIPTS

You have heard a recorded conversation. This is proper evidence that you should consider together with and in the same way you consider the other evidence.

You were also given a partial transcript of the interview to help you follow the recording as you listened to it. The recording is the evidence of what was said and who said it. The transcript is not evidence. If you noticed any differences between what you heard in the interview and what you read in the transcript, your understanding of the recording is what matters. In other words, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of a recording, you must ignore the transcript as far as those parts are concerned.

I am providing you with the recording and a device with instructions on its use. It is up to you to decide whether to listen to the recording during your deliberations. You may, if you wish, rely on your recollections of what you heard during the trial.

If, during your deliberations, you wish to have another opportunity to view the transcript as you listen to a recording, send a written message to the court security officer, and I will provide you with the transcript.

Seventh Circuit Federal Criminal Jury Instructions § 3.14.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.01 ELEMENTS OF 18 U.S.C. § 922(g)(5)

**POSSESSION OF AMMUNITION BY AN ALIEN ILLEGALLY AND
UNLAWFULLY IN THE UNITED STATES**

The indictment charges the defendant with possession of ammunition by an alien illegally and unlawfully in the United States. In order for you to find the defendant guilty of this charge, the government must prove each of the three following elements beyond a reasonable doubt:

1. The defendant knowingly possessed ammunition; and
2. At the time of the charged act, the defendant was an illegal alien in the United States; and
3. The ammunition had been shipped or transported in interstate commerce.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

Seventh Circuit Federal Criminal Jury Instructions § 4.01 and 18 U.S.C § 922(g)(5).

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.01 ELEMENTS OF THE OFFENSE DEFINITIONS

Definition of "Ammunition"

"Ammunition" means ammunition or cartridge cases, primers, or propellant powder designed for use in any firearm.

Seventh Circuit Federal Criminal Jury Instructions 18 U.S.C. § 921(a)(17)(A).

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.01 ELEMENTS OF THE OFFENSE DEFINITIONS

Definition of "Alien"

An "alien" is a person who is not a citizen or national of the United States.

8 U.S.C. § 1101(a)(3).

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.01 ELEMENTS OF THE OFFENSE DEFINITIONS

Definition of "National"

A "national" is a "person who, though not a citizen of the United States, owes permanent allegiance to the United States." A non-citizen "national" is limited to someone born in a United States territory, and "owing a permanent allegiance to the United States" requires either birth in the United States or one of its territories, or a completed naturalization.

8 U.S.C. § 1101(a)(22). See also *United States v. Laguna*, 333 F.Supp.2d 748, 750-751 (N.D. IL 2004); *Salim v. Ashcroft*, 350 F.3d 307, 309-310 (3rd Cir. 2003); *Perdomo-Padilla v. Ashcroft*, 333 F.3d 964, 967-968 (9th Cir. 2003).

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.01 ELEMENTS OF THE OFFENSE DEFINITIONS

Definitions of "In or Affecting Commerce" and
"In Interstate or Foreign Commerce"

"In or affecting commerce" and "interstate or foreign commerce" include commerce between any place in a State and any place outside of that State. The terms do not include commerce between places within the same State but through any place outside of that State.

This requirement is satisfied if the ammunition traveled in interstate or foreign commerce prior to the defendant's possession of it. Ammunition has traveled in interstate or foreign commerce if it has traveled between one state and any other state or country, or across a state or national boundary line. The government need not prove how the ammunition traveled in interstate commerce; that the ammunition's travel was related to the defendant's possession of it; or, that the defendant knew the ammunition had traveled in interstate commerce.

Seventh Circuit Federal Criminal Jury Instructions 18 U.S.C. § 922(g).

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.05 DATE OF CRIME CHARGED

The indictment charges that the crime happened “on or about” August 24, 2013. The government must prove that the crime happened reasonably close to the date. The government is not required to prove that the crime happened on the exact date.

Seventh Circuit Federal Criminal Jury Instructions § 4.05.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.08 PUNISHMENT

In deciding your verdict, you should not consider the possible punishment for the defendant who is on trial. If you decide that the government has proved the defendant guilty beyond a reasonable doubt, then it will be my job to decide on the appropriate punishment.

Seventh Circuit Federal Criminal Jury Instructions § 4.08.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.10 KNOWINGLY – DEFINITION

A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

Seventh Circuit Federal Criminal Jury Instructions § 4.10.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

4.13 POSSESSION – DEFINITION

A person possesses an object if he has the ability and intention to exercise direction or control over the object, either directly or through others.

Seventh Circuit Federal Criminal Jury Instructions § 4.13.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

7.01 JURY DELIBERATIONS

Once you are all in the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as telephone, cell phone, smart phone, iPhone, Blackberry, computer, text messaging, instant messaging, the Internet, chat rooms, blogs, websites, or services like Facebook, MySpace, LinkedIn, YouTube, Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the foreperson, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 6–6, or 8–4, or whatever your vote happens to be.

Seventh Circuit Federal Criminal Jury Instructions § 7.01.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

7.02 VERDICT FORM

A verdict form has been prepared for you. You will take this form with you to the jury room.

[Read the verdict form.]

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the verdict form.

Advise the court security officer once you have reached a verdict. When you come back to the courtroom, the clerk will read the verdict aloud.

Seventh Circuit Federal Criminal Jury Instructions § 7.02.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

7.03 UNANIMITY/DISAGREEMENT AMONG JURORS

The verdict must represent the considered judgment of each juror. Your verdict, whether it is guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

Seventh Circuit Federal Criminal Jury Instructions § 7.03.

Given _____

Refused _____

Modified _____